

SHELDON, DEBORAH

04/04/2019

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF OHIO - EASTERN DIVISION

3

4 DEBORAH MOSS,
5 Plaintiff,

6 vs.

JUDGE JAMES S. GWIN

7 CASE NO. 1:18-cv-02257

8

9 UNIVERSITY HOSPITALS
10 HEALTH SYSTEMS, INC.,
11 Defendant.

12

13 DEPOSITION OF DEBORAH SHELDON

14 THURSDAY, APRIL 4, 2019

15 9:59 A.M.

16 Giffen & Kaminski, LLC

17 1300 East Ninth Street, Suite 1600

18 Cleveland, Ohio

19

20

21

22

23

24 REPORTED BY:

25 Sarah R. Drown

1 THE STATE OF OHIO,) SS:
2 COUNTY OF CUYAHOGA.)
3

4 I, Sarah R. Drown, a Registered Professional
5 Reporter and Notary Public within and for the State
6 of Ohio, duly commissioned and qualified, do hereby
7 certify that DEBORAH SHELDON, was first duly sworn
8 to testify the truth, the whole truth and nothing
9 but the truth in the cause aforesaid; that the
10 testimony then given by her was by me reduced to
11 stenotypy in the presence of said witness,
12 afterwards transcribed on a computer/printer, and
13 that the foregoing is a true and correct transcript
14 of the testimony so given by her as aforesaid.

15 I do further certify that this deposition was
16 taken at the time and place in the foregoing caption
17 specified. I do further certify that I am not a
18 relative, counsel or attorney of either party, or
19 otherwise interested in the event of this action.

20 IN WITNESS WHEREOF, I have hereunto set my hand
21 and affixed my seal of office at Cleveland, Ohio, on
22 this 29th day of April, 2019.
23



24 A handwritten signature of Sarah R. Drown in black ink.

25 Sarah R. Drown, RPR, Notary Public
within and for the State of Ohio
My Commission expires April 22, 2022.

SHELDON, DEBORAH
04/04/2019

Page 13

1 Q So can you walk me through this process for --
2 it looks like we've got a number of potential
3 ways that somebody could get funneled into the
4 ADA process, but obviously the one I'm
5 interested in is employee requested an
6 accommodation.

7 A Correct.

8 Q So can you walk me through what happens at UH
9 when an employee requests an accommodation?

10 A When they request an accommodation, a packet of
11 information is sent to them, or provided to
12 them, and then they return that packet. The
13 information goes to the department of
14 disability management services for evaluation.

15 Q Can you explain, what is disability management
16 services?

17 A They handle all of the leaves. So FMLA,
18 medical leave. From a medical perspective,
19 things like that.

20 Q So every single request for accommodations goes
21 through the disability management services?

22 A Correct.

23 Q What about accommodations that were in place
24 prior to the transition with UH? Did UH
25 commence that process from the beginning or did

SHELDON, DEBORAH

04/04/2019

Page 14

1 it preserve and maintain existing
2 accommodations?

3 A Can you ask that question again?

4 Q Sure.

5 So Parma had employees that were there
6 with disabilities and accommodations
7 potentially before UH came in with this merger.
8 What was the process? What was the
9 documentation for employees who already had
10 accommodations? Did they have to start the
11 process again when UH merged?

12 MR. BULEA: Objection to
13 the form of the question.

14 You can answer.

15 A The information -- I wouldn't have been privy
16 to the information. It would have been held at
17 the -- what was called the employer's health
18 source department. That's who handled them.

19 Q What is the employer's health source
20 department?

21 A They would be what is the equivalent to
22 University Hospitals disability management
23 services. So they would handle that
24 information.

25 Q So that would --

SHELDON, DEBORAH
04/04/2019

Page 18

1 accommodation request.

2 Q Are you also responsible for employee
3 discipline or performance evaluations or any of
4 those other HR functions for employees at
5 Parma?

6 A I'm not responsible for performance
7 evaluations. My involvement with corrective
8 action disciplinary process is to work with the
9 leaders to make sure that it's a fair and just
10 process.

11 Q But if there were corrective action or somebody
12 was not performing or meeting expectations for
13 performance, would you know about that?

14 A If the manager shares it with me, yes.

15 Q A manager could not unilaterally discipline or
16 fire somebody without it going through you at
17 Parma, is that right, for the time period --
18 from 2015 until now, is that right?

19 A Corrective actions -- copies of corrective
20 actions that are issued are sent to the human
21 resources department. We do make a request
22 that we're aware of those before they're issued
23 so we have the opportunity to make sure that
24 they're fair and just.

25 Q Have you ever reviewed Ms. Moss' -- her HR

SHELDON, DEBORAH

04/04/2019

Page 19

1 file?

2 A Yes, I have.

3 Q At what point did you first review Ms. Moss' HR
4 file?

5 A Through this process.

6 Q When you say "this process," like when did you
7 first review her HR file?

8 A I cannot recall the -- to give you a date of
9 that.

10 Q We'll circle back to that.

11 Prior to just, say, October 2016,
12 Ms. Moss was never disciplined, to your
13 knowledge, was she?

14 A Not to my knowledge, no.

15 Q There was literally nothing in her HR file at
16 all that indicated that she was not meeting
17 performance expectations in any area, was
18 there?

19 A There was not.

20 Q So I would like now to turn to what we've
21 marked as Exhibit P 2. Or what we will mark as
22 Exhibit P 2.

23 - - - - -

24 (Plaintiff's Exhibit 2 was marked.)

25 - - - - -

SHELDON, DEBORAH
04/04/2019

Page 20

1 A What is this I'm looking at?

2 Q That's what I was going to ask you. I'm not
3 sure who produced this document or in what -- I
4 don't know what this document is. I was hoping
5 you might know what this document is.

6 A I do not know what this document is. I've
7 never seen this document before.

8 Q Okay. So do you think that this could have
9 been the disability management case notes?

10 A I think it's part of the EAP process.

11 Q Ah. Okay. Well, we'll skip over that, then,
12 for now if you're not familiar with number 2.

13 MR. BULEA: I can help you
14 on a break, if you want.

15 MS. WHITE: Absolutely.
16 Yeah. You know, I want to save my questions
17 for the right people.

18 MR. BULEA: Sure. Yeah.

19 Q All right. So let's move, then, to Exhibit 3.

20 Actually, let me just -- before I get
21 into Exhibit 3, let me just ask you, when did
22 Ms. Moss first request an accommodation that
23 came to your attention?

24 A The fall of 2016.

25 Q What did she request?

SHELDON, DEBORAH
04/04/2019

Page 21

1 A Adaptive equipment.

2 Q Do you remember what the adaptive equipment
3 was?

4 A I think it was called a TOPAZ monitor, if I
5 recall correctly.

6 Q How was that request processed and responded to
7 by UH?

8 A So that came from Debbie Moss. And then we
9 then provided her with the process, the forms
10 that come from University Hospitals for the
11 whole ADA process. We provided her with the
12 necessary forms to be returned.

13 Q Okay. When you say "forms," you're talking
14 about notes from her doctor, is that right,
15 among other things?

16 A Correct. So the supporting documentation that
17 would then go to disability management
18 services.

19 Q Were you aware that Ms. Moss had a CCTV at her
20 workplace at the time that she made her
21 request?

22 A I learned that once this process began, yes.

23 Q Apart from Ms. Moss, did you have any
24 communications with her supervisor or anybody
25 else about her request for accommodations or

SHELDON, DEBORAH
04/04/2019

Page 22

1 her need for accommodations?

2 A Once this process started?

3 Q Yes.

4 A Yes.

5 Q So what were those conversations and when did
6 they happen?

7 A There were conversations that the accommodation
8 request was made, that we would begin the
9 process, that the paperwork was sent.
10 Conversations that we haven't received the
11 paperwork back. And then conversations once
12 the paperwork was provided. And then
13 conversations about what those accommodation
14 requests were.

15 Q So now let's move to Exhibit 3, then, and take
16 a look at this and let me know if this rings a
17 bell.

18 - - - - -

19 (Plaintiff's Exhibit 3 was marked.)

20 - - - - -

21 A Okay.

22 Q Can you identify these documents?

23 A I've not seen them before. These are the
24 documents that the employee provides and/or
25 their provider sends to disability management

SHELDON, DEBORAH
04/04/2019

Page 23

1 services.

2 Q How would a provider receive this document,
3 P 3?

4 A These are part of the packet. When the process
5 begins, the packet goes to the employee and
6 they then work with their provider to complete
7 the paperwork and submit it to disability
8 management services.

9 Q So explain to me, then, what your role is here
10 in this process of evaluating this request for
11 accommodations.

12 A So I'm on the receiving end of the information
13 itself, not the forms. So I have not seen this
14 before.

15 Q Okay.

16 A I'm on the receiving end, that -- the
17 information goes to both disability and then
18 EAP, in this particular case, and then we're on
19 the receiving end of learning what those
20 accommodation requests are and evaluating
21 whether they can be reasonably accommodated.

22 Q Was there any part of this process that could
23 alert you to the fact that this was an
24 accommodation she had already been receiving?

25 A Well, like I said, through the process I

SHELDON, DEBORAH
04/04/2019

Page 24

1 understood -- I learned that she already had a
2 CCTV.

3 Q When did you learn that?

4 A At the initiation of this process.

5 Q So in October 2016?

6 A Or thereabouts. I mean I can't recall the
7 exact date.

8 Q So you knew in October 2016, or around the time
9 that this request was first made, that she
10 already had a CCTV?

11 A I did learn that. And that was of no concern
12 at all.

13 Q But you felt that the paperwork was still
14 needed from the doctor to support the request
15 for an updated CCTV?

16 A The CCTV accommodated Debbie's needs for a
17 particular portion of her job but not the bulk
18 of her job. So that provided assistance for
19 when she was working on the computer, which is
20 a small subset of the duties of the job.

21 Q So she only requested a particular
22 accommodation for a particular portion of her
23 job, right?

24 A Correct.

25 Q Why ask for all of the paperwork for an

SHELDON, DEBORAH
04/04/2019

Page 25

1 accommodation that she already had?

2 A We were asking for what other accommodations
3 could she request that would meet the essential
4 functions of her job, that would allow her to
5 perform the essential functions of her job.

6 Q Where was that conversation happening? Was
7 that happening at the very commencement of this
8 request for accommodations?

9 A Once the paperwork was received, there was a
10 meeting in early 2016. I'm sorry. Early 2017.

11 Q Who was at that meeting and what was the topic
12 of that meeting?

13 A That initial meeting was with myself; Kathy
14 Holley, the manager; and Debbie Moss.

15 Q How do you document work that you've done in
16 your work? Like is there a record of that
17 meeting somewhere? Did you take notes
18 afterwards?

19 A I take notes. There's I think -- it was
20 provided. There's a very detailed list of the
21 meetings that were held, the phone calls, who
22 participated, and what occurred.

23 Q Are they handwritten notes?

24 A There are handwritten notes as well.

25 Q But they're not Exhibit 2?

SHELDON, DEBORAH
04/04/2019

Page 26

1 A No.

2 Q So tell me what -- who initiated that meeting
3 in January and what was the purpose of that
4 meeting with --

5 A The meeting in February?

6 Q I'm sorry. I thought you said you met in
7 January about the request for accommodations.

8 A The request didn't come until January. Even
9 though the packet was provided in October, the
10 request did not come in until January. And we
11 met in early February.

12 Q How could you have gotten a packet back without
13 a request for accommodations?

14 A The request came in the fall of 2016. We
15 provided a packet to Ms. Moss in 2016, in the
16 fall, and then we didn't receive that paperwork
17 back -- it's my understanding that the forms
18 from Debbie Moss were not returned until
19 January of 2017.

20 Q I just want to make -- this is kind of an
21 important point, so I want to make sure I
22 understand what I'm reading here.

23 I'm looking at Exhibit 3 and it has an
24 authorization from Debbie Moss dated October
25 17, 2016 of facts from -- it's also dated

SHELDON, DEBORAH
04/04/2019

Page 37

1 A I believe that's true.

2 Q Her job also involves reading and signing
3 documents, is that right?

4 A It does, and it became aware that she was
5 signing documents without the use of the
6 adaptive equipment, therefore, unable to see
7 them.

8 Q Who said that? I mean who told you that?

9 A Kathy Holley.

10 Q When did she tell you that?

11 A I don't recall the date.

12 Q So with Exhibit P 4 -- I just want to make sure
13 I understand.

14 At this point, this is January 27, 2017,
15 there has been no request and no indication to
16 Ms. Moss that there's any concern about her
17 ability to perform any other functions of her
18 job at that point, right? Nobody's talked to
19 Ms. Moss to say you're not doing something well
20 or not performing your job at that point, is
21 that right?

22 A I'm trying to recall the meeting in October,
23 how much was discussed then. I think that was
24 in early February after the request came in.
25 There was a limited request for accommodations.

SHELDON, DEBORAH
04/04/2019

Page 38

1 Q So there's a limited request, but why was this
2 not sufficient for UH to agree to provide the
3 CCTV?

4 A Again, there was never a concern for the CCTV.
5 There was never a concern.

6 Q Then what more did you or Karen Ladakas or
7 Kathryn Holley need to agree to provide a CCTV?
8 Why was that initial request that Ms. Moss made
9 for a discreet item not simply provided at that
10 point?

11 A Because there were much bigger hurdles, such as
12 the interactive -- the patient care duties of
13 the job that a CCTV did not accommodate.

14 Q When did those hurdles present themselves?

15 A The hurdles presented themselves. There were
16 changes in the department, such as a new
17 manager. There were reduction in staff. There
18 was a higher acuity of the patients with more
19 severe psychosocial illnesses, a younger
20 patient population, and there was an increase
21 in the violent behavior by the patients.

22 Q We'll take those one at time, but I just want
23 to make sure I got all of the those.

24 So you said new manager, reduction in
25 staff, higher acuity, younger patients, more

SHELDON, DEBORAH
04/04/2019

Page 28

1 request for accommodations, is that right?

2 A Or that you're aware that -- it can happen --
3 as you see in the flowchart, it can happen in
4 different scenarios.

5 Q Okay.

6 A In this case she presented a piece of paper, I
7 think with the monitor on it, and we knew that
8 was her request. We provided then the packet
9 to begin the formal process.

10 Q Okay. So she requested that monitor. Her
11 doctor had submitted a form saying yes, indeed
12 she's legally blind and needs a CCTV.

13 What more information did you need at
14 that point to decide whether to act on that
15 request for a CCTV?

16 A At this point -- at this date, I didn't have
17 this information.

18 Q Okay.

19 A I became involved again in late January 2017,
20 when I was told that the paperwork was fully
21 submitted with a request that included a CCTV,
22 but other things that only impacted a subset of
23 her duties.

24 Q Tell me the other things that impacted a subset
25 of her duties. I'm trying to figure out why

SHELDON, DEBORAH
04/04/2019

Page 29

1 did a request for a monitor morph into a demand
2 for information about other parts of her job
3 duties.

4 A There was a concern for her ability to perform
5 the functions of her job. So this, a CCTV,
6 would assist her in a small subset of her
7 duties. The bulk of her duties were related to
8 patient care and this did not assist with those
9 duties.

10 Q Ms. Moss did not request -- in this very formal
11 lengthy process, she didn't make a formal
12 request for accommodations for patient care in
13 October 2016, is that right?

14 A No, she did not.

15 Q In October 2016, how long had she been employed
16 by UH at that point?

17 A Probably 19 years at that point. 19 or 20.

18 Q In the 19 or 20 years that she had been
19 employed there, nobody had ever expressed a
20 concern or provided corrective action
21 indicating that she could not perform her job
22 duties, is that right?

23 A Not that I'm aware of.

24 Q There was no job duty at all that -- prior to
25 her request for a CCTV in October 2016, there

SHELDON, DEBORAH
04/04/2019

Page 28

1 request for accommodations, is that right?

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SHELDON, DEBORAH
04/04/2019

Page 29

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20 concern or provided corrective action
21 indicating that she could not perform her job
22 duties, is that right?

23 A Not that I'm aware of.

24 Q There was no job duty at all that -- prior to
25 her request for a CCTV in October 2016, there

SHELDON, DEBORAH
04/04/2019

Page 30

1 was no job duty that anybody at UH identified
2 that she was unable to perform, is that right?

3 A Not to my knowledge. I never found that,
4 correct.

5 Q Who at UH would have been aware of the request
6 for accommodations? Who would have been aware
7 and who would have had some responsible role in
8 that process?

9 A At this point in time?

10 Q Yes.

11 A Human resources, the manager; disability
12 management services; employee assistance
13 program, the EAP in this case; corporate health
14 from a global standpoint. Anyone who's
15 involved in the health of the employees.

16 Q Explain to me, what is the EAP and when and why
17 would they be involved in this case?

18 A The EAP's an employee benefit. It provides
19 counseling and other services, support
20 programs, to assist the employees. They're
21 also used in cases where there might be a need
22 to -- there are self-referrals and there are
23 mandatory referrals.

24 Q This was a mandatory referral, is that right?

25 A It was.

SHELDON, DEBORAH
04/04/2019

Page 31

1 Q That occurred in February of 2017?

2 A Correct.

3 Q Ms. Moss did not request EAP assistance at that
4 point, did she?

5 A No, she did not.

6 Q Actually, she never requested EAP assistance?

7 A No, she didn't.

8 Q What would have happened if she had not been
9 involved with EAP? She could have been subject
10 to corrective action, is that right?

11 A Correct.

12 Q If disability management services had had
13 Dr. Traboulsi's medical information in October
14 2016, would it have been appropriate to wait
15 another two months before providing that
16 accommodation or making a decision on it?

17 MR. BULEA: Objection to
18 the form of the question.

19 You can answer.

20 A Can you ask it again?

21 Q Yeah.

22 Why wait two months to have any action on
23 her request for accommodations for the CCTV?

24 A From October?

25 Q Yes.

SHELDON, DEBORAH
04/04/2019

Page 47

1 meeting.

2 A Which part are you referring to?

3 Q So it's marked -- it's 1374, Bates-stamped at
4 the bottom. So there's these page numbers at
5 the bottom.

6 A Uh-huh. Okay.

7 Q So I'm on this. It says: Claim conference
8 call. HR manager, Jane Reese, Karen Ladakas.
9 Concerns reviewed. Manager to have a sit down
10 with the employee regarding completing --
11 employee completing ADA employee portion per
12 manager, who's had closed-c TV since 2013. Has
13 someone from nursing office read LMS emails.
14 Concerned unable to see visual cues from
15 patients in group therapy, unable to see
16 patients clearly, safely as she is in psych
17 ward.

18 Does that ring a bell?

19 A The call or this, what I'm reading?

20 Q The call at all, and then we'll jump into the
21 content.

22 A Yeah. The calls regarding the concerns, yes.

23 Q Does this accurately reflect that call?

24 A Concerns over getting an ADA completion of it,
25 realization that she had a CCTV. It became

SHELDON, DEBORAH
04/04/2019

Page 48

1 aware to me that someone's reading her emails.

2 There was a concern of her visual cues and that
3 she was unable to see patients clearly, yes. I
4 was aware of those topics.

5 Q Okay.

6 A And that she was unable to fully participate in
7 the crisis prevention or -- in violent crisis
8 interaction, the de-escalation class.

9 Q Who is AHN?

10 A I'm going to guess --

11 MR. BULEA: Don't guess.

12 THE WITNESS: Okay.

13 MR. BULEA: If you don't
14 know, you don't know. We can find out.

15 THE WITNESS: Okay.

16 MR. BULEA: She doesn't
17 want you to guess.

18 THE WITNESS: Okay.

19 Q So at the time that this phone call happened
20 among -- were these the folks that were in on
21 that phone call? Was that you, Kathy Holley's
22 the manager, Jane Reese, and Karen Ladakas, is
23 that correct?

24 A That's correct.

25 Q Was there anything else that was discussed at

SHELDON, DEBORAH
04/04/2019

Page 49

1 that meeting, to your recollection, that's not
2 reflected in these notes?

3 A Concern for her ability to safely perform her
4 job.

5 Q Okay. So this was your first meeting about
6 that, though, right? Was there a prior meeting
7 about concerns for her safety in performing her
8 job?

9 A We had conversations I believe in January. We
10 were waiting for information, knowing that the
11 request that we had did not fully meet the --
12 the accommodation request we had did not
13 address all of the functions of her job, the
14 essential functions of her job.

15 Q At that point you had not sent her for a
16 fitness for duty exam and she had not requested
17 any other specific accommodations --

18 A That's correct.

19 Q -- at that point? Okay.

20 MR. BULEA: You're doing
21 great, but just let her finish her question
22 before you answer so the court reporter can get
23 it down.

24 Q You became aware then, at this meeting, if you
25 hadn't been before, that she had a CCTV since

SHELDON, DEBORAH
04/04/2019

Page 50

1 at least 2013, right?

2 A I became aware of it during this process, yes.

3 Q Was there any other documentation of other
4 accommodations that she had received?

5 A Not that I'm aware of.

6 Q Were you concerned that there were other
7 accommodations that you might not have known
8 about?

9 A It became evident that there weren't any.

10 Q You thought that there were not any
11 accommodations?

12 MR. BULEA: Accommodations
13 or documentation, you mean?

14 MS. WHITE: Accommodations.

15 A The CCTV.

16 Q That was the only accommodation you thought she
17 had?

18 A I learned that someone was assisting her in
19 reading her emails.

20 Q Okay. Yeah. Sorry. Thank you for clarifying
21 that portion.

22 Did you have any concern about that, by
23 the way, somebody reading her emails for her?

24 A No concern.

25 Q You didn't ask her to get a doctor's note to

SHELDON, DEBORAH
04/04/2019

Page 51

1 justify that or fill out forms or go to the
2 disability management services for that
3 accommodation?

4 A No.

5 Q At that meeting you guys -- sorry.

6 At that meeting it was anticipated and
7 acknowledged that there was a crisis
8 intervention training that was coming up, is
9 that right?

10 A That it already happened?

11 Q No, that it was going to happen.

12 A Oh. Yes, correct.

13 Q Did anybody reach out to Ms. Moss to begin the
14 interactive process, to identify and ensure
15 that reasonable accommodations would be
16 provided for her at the crisis intervention
17 training?

18 A There was no request for any accommodation for
19 that training.

20 Q You guys -- I'm sorry.

21 The folks present at this meeting,
22 including you, recognized that her vision
23 impairment may pose a problem for her to
24 benefit from and receive and participate in
25 that training, is that right?

SHELDON, DEBORAH
04/04/2019

Page 52

1 A Can you say that one more time, please?

2 Q Sure.

3 On February 1, 2017, in this meeting
4 between you, Ms. Holley, Jane Reese, and Karen
5 Ladakas, that group of folks, including you,
6 recognized that Ms. Moss was going to have a
7 de-escalation training in a little over a week
8 and that her vision impairment may pose an
9 issue with her participation in that meeting,
10 is that right?

11 A I can tell you that the topic of the
12 de-escalation training at that meeting was not
13 a focus of that.

14 Q "De-escalation class on 2/9/2017. AHN to be in
15 class as well. Monitor assessments more
16 closely, even to reassess to check on her
17 ability to perform essential functions. Ask
18 AHN to weigh in on employee's ability to
19 participate in the class."

20 Is that right?

21 A Those are not my notes.

22 Q Okay. But does that ring a bell as to what was
23 discussed about -- was this team concerned that
24 Ms. Moss was not going to be able to
25 participate in the crisis intervention

SHELDON, DEBORAH
04/04/2019

Page 53

1 training?

2 A The team was concerned about Ms. Moss' ability
3 to perform the essential functions of her job.

4 Q The team was concerned that Ms. Moss, because
5 of her vision impairment, might not be able to
6 fully participate in the crisis intervention
7 training, is that right?

8 MR. BULEA: Objection.

9 Asked and answered.

10 You can answer.

11 A Clearly there's a concern in her ability to
12 interact for -- so that is a function of the
13 job, is to participate in that training.

14 Q Yes. And it's a benefit that's offered to
15 employees as well?

16 A Yes, it is.

17 Q At this point the HR team and Ms. Moss' manager
18 are aware that she has a vision impairment and
19 the team is actually anticipating that the
20 vision impairment might make it more difficult
21 for her to -- it might make it difficult for
22 her to participate in the class? She might not
23 be able to participate in the class because of
24 her vision impairment, is that right?

25 MR. BULEA: Objection.

SHELDON, DEBORAH
04/04/2019

Page 54

1 You can answer.

2 A There was a concern, that she be assessed
3 during that training.

4 Q Nobody told Ms. Moss that she was going to be
5 observed during this training to determine
6 whether she could -- she had the ability to do
7 it, was there?

8 A I don't know that.

9 Q You're not aware of anybody -- you're not aware
10 of any communication to Ms. Moss, though,
11 right?

12 A I'm not.

13 Q Did anybody initiate the interactive process to
14 identify potential accommodations that would
15 prevent Ms. Moss to fully participate in the
16 crisis intervention training?

17 A There was an exhaustive process to try -- for
18 this training?

19 Q Yes, for this training.

20 A That particular, no.

21 Q No. Why not?

22 A We were in the middle of the process.
23 Evaluating the accommodations that had been
24 requested of us.

25 Q So she requested one item, the CCTV?

SHELDON, DEBORAH
04/04/2019

Page 55

1 A Correct.

2 Q And then suddenly you're now questioning her
3 ability to even do her job safely, correct?

4 MR. BULEA: Objection.

5 You can answer.

6 A Yes.

7 Q You specifically highlighted that in a week and
8 a half she's going to have a training coming up
9 that she might not be able to do, is that
10 right?

11 A That was -- they knew there was a training. I
12 guess it would be another way to evaluate her
13 ability to perform the essential functions of
14 her job.

15 Q But nobody reached out to say "Ms. Moss, do you
16 have any other accommodations or do you need
17 any accommodations for that crisis intervention
18 training"?

19 MR. BULEA: Objection.

20 Asked and answered.

21 You can answer.

22 A Correct.

23 Q This crisis intervention training is a pretty
24 important class. It's actually a required
25 class for everybody who has this particular job

SHELDON, DEBORAH
04/04/2019

Page 56

1 role, is that right? It's in the job
2 description.

3 A Yes.

4 Q Ms. Moss has successfully completed that crisis
5 intervention training over a dozen times, isn't
6 that right?

7 A The format in which the training was delivered
8 has changed.

9 Q How did the format change?

10 A I don't have the specifics of that.

11 Q When did it change?

12 A I don't have the date of that either.

13 Q Was this a training that was provided with
14 visual demonstration?

15 A Yes.

16 Q What else? What other features of the
17 training -- how did the training work
18 otherwise?

19 A I don't have the details of that. I can't
20 speak to that.

21 Q On this particular call it sounds like the team
22 was realizing that there were some
23 accommodations that there were no documentation
24 of, for instance, Ms. Moss has had a CCTV since
25 2013, right?

SHELDON, DEBORAH
04/04/2019

Page 86

1 little bit more closely.

2 The required credentials here include
3 nonviolent crisis prevention training within
4 three months of employment, correct?

5 A Correct.

6 Q So Ms. Moss had been in this exact position and
7 this job description had not changed since
8 2009, correct?

9 A That I'm aware of, correct.

10 Q She had successfully completed the nonviolent
11 crisis intervention training, correct?

12 A That I'm aware of, yes.

13 Q She had done it a number of times, correct?

14 A That I'm aware of, yes.

15 Q Now, whenever you say you're aware of, how much
16 of Ms. Moss' personnel file did you review?

17 A A good portion of it.

18 Q Did you review back to 1996?

19 A Potentially.

20 Q She took that nonviolent crisis intervention
21 training and demonstrated proficiency in it
22 almost -- I mean almost every other year, is
23 that correct, approximately?

24 A That's correct.

25 Q In your review of her personnel file, you

SHELDON, DEBORAH
04/04/2019

Page 87

1 didn't find any indication of anybody ever
2 indicating that she was not able to complete
3 that crisis intervention training, did you?

4 A No. And no one has said that.

5 Q Okay. So let's look at the position summary
6 and essential duties.

7 "Organization and conduct daily
8 therapeutic programs to facilitate
9 rehabilitation of people with psychosocial
10 illnesses; assess, maintain, and develop
11 programs to enhance social, cognitive,
12 physical, emotional functioning of patients."

13 Correct?

14 A Correct.

15 Q We also have a -- including performance.

16 Perform assessment for functional and
17 rehabilitation -- rehabilitative needs that may
18 include activities of daily living, community
19 living skills, social, leisure, and vocational
20 skills, self-care, correct?

21 A Correct.

22 Q I'm not going to read the whole thing.

23 On February 14, 2017, which of these
24 functions could Ms. Moss not perform?

25 A The concern was surrounding 1, 2, 3, and 4.

SHELDON, DEBORAH
04/04/2019

Page 99

1 A I do not.

2 Q You've never seen Allison Evans' report or
3 feedback?

4 A I saw Allison Evans' feedback.

5 Q So let's talk about -- what was Allison Evans'
6 feedback?

7 Who is Allison Evans? Let's start at the
8 beginning.

9 A She's an occupational therapist.

10 Q Who is she employed by?

11 A University Hospitals.

12 Q What does she do for University Hospitals?

13 A She at the time was a supervisor in rehab
14 therapy. Rehab services.

15 Q Does she treat, like, UH patients, or is she
16 employed in, like, UH's HR?

17 A She's not employed by HR.

18 Q Okay. What kind of patients does she see?

19 A A multidisciplinary group of patients.

20 Q Does she specialize in visual impairment?

21 A I do not know that.

22 Q Has she ever worked with anybody with a visual
23 impairment?

24 A I can't answer that.

25 Q You said that you wanted documentation or

SHELDON, DEBORAH
04/04/2019

Page 100

1 information from somebody who was qualified to
2 evaluate functional limitations for people with
3 vision impairment in work, is that right?

4 A Correct.

5 Q Was she that person? Did she have that
6 expertise?

7 A It's my understanding Allison Evans was asked
8 to do a functional capacity assessment to
9 assess the ability in the workplace.

10 Q Was she asked to identify assistive technology
11 or reasonable accommodations?

12 A I'm not aware of that. That would have been a
13 conversation with EAP.

14 Q Tell me what you know about her findings.

15 A They're included in the document. There's a
16 summary. It's kind of a lengthy list I recall
17 seeing.

18 MR. BULEA: She's just
19 wondering, I think, if you can recall them
20 off -- what your understanding was.

21 I don't mean to reask your question.

22 Sorry.

23 MS. WHITE: No. No.

24 Please.

25 A Go ahead and ask me again.

SHELDON, DEBORAH
04/04/2019

Page 101

1 Q What do you know about what Allison Evans
2 concluded with Ms. Moss?

3 A Allison Evans concluded that based on the
4 assessment of the duties, that she -- that
5 Ms. Moss would be unable to perform the
6 functions because of the perceptual -- visual
7 perception that would be required in a rehab
8 therapist's role.

9 Q Were you satisfied that Ms. Evans was competent
10 to perform that assessment and reach those
11 conclusions?

12 A I had no concerns about her at all.

13 Q You relied on her conclusions as well?

14 A I think there were multiple conclusions. She
15 was one of those.

16 Q Who were the others?

17 A There was a summary from two physicians. Both
18 ophthalmologists, I believe.

19 Q Those were summaries of Ms. Moss' visual
20 acuity, correct?

21 A Correct.

22 Q They were not summaries of Ms. Moss' functional
23 ability on the job, is that correct?

24 A Correct. And her visual ability.

25 Q In fact, Dr. Balciunas, her ophthalmologist,

SHELDON, DEBORAH
04/04/2019

Page 102

1 specifically said that she was unable to render
2 an opinion on the functional aspects of how
3 Ms. Moss' disability affected her ability to do
4 her job, correct?

5 A I think that position also said that the visual
6 deficits would pose concern or the inability to
7 see near and far.

8 Q Okay. So there's a vision impairment, but
9 Dr. Balciunas specifically said that she could
10 not comment or render an opinion on how that
11 vision impairment would affect Ms. Moss'
12 ability to do the job, correct?

13 A I believe that's true.

14 Q That determination about the functional part,
15 Allison Evans reached a decision, a conclusion,
16 based in part on a visit that she conducted to
17 Ms. Moss' workplace, correct?

18 A Correct.

19 Q Did Allison Evans ever speak with Ms. Moss
20 about her job or accommodations?

21 A Not that I'm aware of.

22 Q Did anybody ever talk to Ms. Moss -- or to
23 Ms. Evans about potential accommodations in the
24 workplace?

25 A I don't know. Ms. Evans would have worked with

SHELDON, DEBORAH
04/04/2019

Page 103

1 the EAP.

2 Q Okay.

3 A She did not work with me directly.

4 Q Okay. Let's go to Exhibit 13.

5 - - - - -

6 (Plaintiff's Exhibit 13 was marked.)

7 - - - - -

8 Q Have you ever seen this document before?

9 A I have not.

10 Q This wasn't one of the doctors' reports that
11 you relied upon?

12 A I received a summary.

13 Q Okay. What was the information that you
14 received about Dr. Traboulsi's conclusions?

15 A That there was a loss of central vision,
16 peripheral remained unaffected. That this
17 physician could not make a determination
18 because he had not observed her in the
19 workplace. If that's a he.

20 He had an appreciation that she would not
21 be able to recognize faces or expressions on
22 patients, which is a big part of the role of a
23 rehab therapist.

24 Q Facial expressions, though, is not part of that
25 initial job description, though, was it? We

SHELDON, DEBORAH
04/04/2019

Page 107

1 A Correct.

2 Q That information included -- you were aware
3 that this doctor said "I'm uncertain about the
4 impact of her core central vision on her
5 ability to perform individual tasks because
6 I've not observed her in the workplace and I'm
7 not in a good position to make comments about
8 that aspect," is that correct?

9 A It says that.

10 Q So let's move on to Exhibit 14.

11 MR. BULEA: Can we go off
12 for a second?

13 MS. WHITE: Sure.

14 - - - - -

15 (Discussion held off the record.)

16 - - - - -

17 (Plaintiff's Exhibit 14 was marked.)

18 - - - - -

19 BY MS. WHITE:

20 Q P 14. If you could take a look at this.

21 Have you seen this document before?

22 A I have not.

23 No, I assume this is something that went
24 through the EAP.

25 Q Were you aware of the content of this document?

SHELDON, DEBORAH

04/04/2019

Page 108

1 A Do you want me to read the whole thing?

2 Q Well, let me ask you about parts of this
3 document, then.

4 Were you aware that the Cleveland Sight
5 Center had conducted a low vision evaluation
6 report of Ms. Moss?

7 A I was aware that the Cleveland Sight Center
8 made an assessment. How they approached that,
9 I'm not aware of that.

10 Q But that was part of the fitness for duty
11 evaluation process, is that correct?

12 A An evaluation?

13 Q Yes.

14 A An evaluation was, correct.

15 Q Let's see if we can try to connect the dots
16 here. Once again, if you're not the
17 appropriate witness, we're probably going to
18 have the appropriate witness tomorrow.

19 I just want to direct your attention real
20 quick to document -- we'll toggle between
21 document P 11 on the second page -- I'm sorry,
22 the third page. 1358 is the Bates stamp at the
23 bottom.

24 A Okay.

25 Q This is low vision assessment from the

SHELDON, DEBORAH
04/04/2019

Page 109

1 ophthalmologist at the Cleveland Sight Center.

2 Midway through vocational issues it says

3 "Her ophthalmologist referred her to the

4 Cleveland Sight Center to address the

5 functional questions that the forms require."

6 A Okay.

7 Q Does that sound right to you? Does that ring a
8 bell?

9 A That sounds correct.

10 Q So the initial assessment went to

11 Dr. Balciunas, who's an ophthalmologist.

12 Dr. Balciunas offered some comments on

13 Ms. Moss' visual acuity, but said for the

14 functional questions that there was a referral

15 to the Cleveland Sight Center?

16 MR. BULEA: Objection.

17 Q Is that right?

18 MR. BULEA: You can answer.

19 A That's what this says.

20 Q Okay. Then going back to P 14, here we are

21 with an occupational therapy low vision

22 evaluation report from the Cleveland Sight

23 Center, correct?

24 A Correct.

25 Q You have never seen this document before?

SHELDON, DEBORAH
04/04/2019

Page 110

1 A I have not.

2 Q So I'm going to run some proposed
3 accommodations that were, you know, recommended
4 in this report by you and ask you if you've
5 ever heard of these before. We'll just start
6 on page 1447.

7 "Ms. Moss reported that the new copiers
8 at work have a flat touchscreen. She would
9 benefit from bump dots to assist her in
10 orienting to the position of copy function
11 display."

12 Have you ever heard that before?

13 A I heard that in a summary. Or read that in a
14 summary.

15 Q Okay. Was that provided?

16 A No, but it was not of concern.

17 Q It was of concern to Ms. Moss. She
18 specifically requested that accommodation.

19 A I understand that. Those -- again, any
20 accommodation requests that came to us were not
21 of concern to facilitate.

22 Q Okay.

23 A Never once a concern.

24 Q I'm going to go to a couple other items.

25 "Ms. Moss is required to write out daily

SHELDON, DEBORAH
04/04/2019

Page 111

1 schedule on a whiteboard as part of a schedule
2 awareness. OT problem solved with Ms. Moss
3 regarding the use of contrast electrical tape
4 to grid off whiteboard fields from the daily
5 schedule. She reports this method has been
6 done and is effective."

7 Have you ever heard that recommendation?

8 A I heard that there was a schedule awareness and
9 that whiteboards were going to be used.

10 Q In fact, Ms. Holley specifically stated that
11 whiteboard in schedule awareness was an issue
12 in her list of factors that led to her to
13 recommend the fitness for duty evaluation,
14 correct?

15 A I remember that subject.

16 Q Okay.

17 A Yes.

18 Q Kathy Holley poses a concern. Cleveland Sight
19 Center has proposed a solution.

20 Did that solution ever make it to you?

21 Did you ever consider that?

22 A I don't recall the grid off, no.

23 Q So there was never an interactive discussion
24 with Ms. Moss about whether that could solve
25 that problem?

SHELDON, DEBORAH
04/04/2019

Page 112

1 A No. Ms. Moss never discussed that with me.

2 Q This was definitely conveyed to UT -- I'm
3 sorry, to UH through the EAP process?

4 A Correct.

5 Q Which was the fit for duty --

6 A And again, that would have been a small subset.

7 Q Well, let's go on to another one.

8 Ms. Moss reported that on occasions she
9 has bumped into staff when they are wearing
10 dark clothing that poorly contrasted with dark
11 flooring on the unit. She reported this as a
12 minor concern -- as a mild concern.
13 High-contrast light on dark helps with improved
14 viewing. Also it was reported that she's
15 walked into a patient's room when being seen by
16 nursing. Use of verbal cues from staff is
17 acceptable etiquette when working with persons
18 with low vision or blindness.

19 Do you have any thoughts about those
20 recommendations?

21 A Do you have a specific question?

22 Q Yes.

23 So you specifically mentioned that one of
24 Ms. Holley's concerns that you thought was a
25 legitimate concern was Ms. Moss bumping into

SHELDON, DEBORAH
04/04/2019

Page 113

1 people in the hallway, correct?

2 A Correct.

3 Q So here's a proposed solution, that higher
4 contrast flooring or lighting would help with
5 improved viewing to prevent or reduce bumping
6 into staff in the hallway.

7 Do you have any thoughts about whether
8 that would be effective?

9 A That being effective would not be my
10 determination to make.

11 Q Whose determination was that to make?

12 A That would be a medical assessment.

13 Q So what did UH -- UH has been presented with
14 this proposal.

15 What did UH do to consider this proposal?

16 A I can't say that I recall. I know there was a
17 hallway issue, the contrast. I do not recall
18 seeing a recommendation or a request for
19 accommodation for changing a flooring.

20 Q Wow. So the EAP process -- you're facilitating
21 the fitness for duty exam. That is processed
22 through the EAP process and somehow this
23 recommendation did not make its way back to
24 you, is that right?

25 A I don't recall seeing that or knowing that.

SHELDON, DEBORAH
04/04/2019

Page 114

1 Q UH Parma is just under -- I mean they're in a
2 big renovation process right now. Correct?

3 A True.

4 Q So is any flooring being replaced as part of
5 that renovation?

6 A Well, if it's -- it's an addition going on. So
7 there would be new flooring.

8 Q And lighting?

9 A It's a new addition. So there would be new
10 lighting.

11 Q There's also a section here that speaks of
12 walking into a patient's room when being seen
13 by nursing. Use of verbal cues from staff is
14 acceptable etiquette when working with a person
15 with low vision or blindness.

16 Do you have any thoughts about that?

17 A My thought would be a person would need to know
18 someone's coming to be able to use a verbal
19 cue.

20 Q Okay. Because you can't see somebody who's not
21 inside the room, right?

22 A Nor can the person inside the room see if
23 someone's coming.

24 Q That's right.

25 In fact, you might not even see them at

SHELDON, DEBORAH
04/04/2019

Page 115

1 all. You might hear that they're coming,
2 correct? Like if a staff member's back is
3 turned to the door, they might hear somebody
4 approaching inside the room for situational
5 awareness, is that correct?

6 A They might.

7 Q Okay.

8 A It depends on what's happening in the room.

9 Q Do you know whether Ms. Moss can see movement?

10 A She has peripheral vision I'm told.

11 Q No doctor has ever said that she can't perceive
12 people coming and going, have they?

13 A I've not been told that.

14 Q In fact, they were quite specific, that it's --
15 the facial expression is the -- in the central
16 vision is the main visual limitation, correct?

17 A What was the original question?

18 Q Strike that.

19 A Okay.

20 Q I'll move on. I want to talk about one other
21 item on here.

22 "Ms. Moss is required to participate in
23 crisis intervention and staff training. Having
24 materials ahead of time for review and
25 partnering with a staff member or trainer who's

SHELDON, DEBORAH
04/04/2019

Page 116

1 aware of the need for verbal and touch prompts
2 to motor Ms. Moss through any physical
3 components may be beneficial."

4 Do you have any thoughts about that?

5 A I don't see it as an issue.

6 Q You don't see the crisis intervention
7 performance as an issue?

8 A I don't see that providing information ahead of
9 time -- again, I do not conduct that training,
10 I don't know how it's implemented, but it
11 certainly would be a fair request.

12 Q Okay. There was a team at UH, though, who
13 anticipated that this crisis intervention
14 training was coming up and that Ms. Moss'
15 visual impairment may pose an issue for the
16 crisis intervention training, correct, the one
17 on -- this is the February 9, 2017 crisis
18 intervention training. Right?

19 MR. BULEA: Objection.

20 You can answer.

21 A They knew that that training was coming, yes.

22 Q Nobody --

23 A They knew there were concerns about her ability
24 in the workplace, yes.

25 Q Did it occur to anybody who was in that room

SHELDON, DEBORAH
04/04/2019

Page 117

1 that physical prompts might be a way to address
2 and make accessible a presentation that's
3 conducted in a visual format?

4 A I can't respond because I wasn't in that room.

5 Q You were in the phone call, though. Did
6 anybody mention anything about that?

7 A I don't recall that.

8 Q But you think that would be effective, though,
9 right, this proposed accommodation, the
10 physical prompts?

11 A I would have to -- that would have to be asked
12 of the people conducting and creating the
13 training. It's a fair question to ask them.

14 Q Okay. Who provides that training?

15 A I believe our organizational development and
16 learning. It might be in conjunction with
17 protective services. I can't say for sure. It
18 may, in fact, be more protective services.

19 Q But UH either contracts for the service or
20 provides it internally, correct?

21 A Correct.

22 Q What is UH's process to anticipate the need for
23 auxiliary aids in communication for training
24 materials?

25 A For training materials?

SHELDON, DEBORAH
04/04/2019

Page 118

1 Q And formats.

2 A I'm not involved in those. So I don't know
3 exactly what those are.

4 Q So you don't have, like, protocols to
5 anticipate in advance if an employee with a
6 sensory disability might need, for instance, a
7 microphone at a staff meeting or materials
8 provided in large print or any other auxiliary
9 aids?

10 A I would have to ask those people that conduct
11 that training.

12 Q Okay. Nobody asked the people who conducted
13 this training, correct?

14 A I did not.

15 Q Okay. Nobody else in that phone call asked
16 either, to your knowledge, correct?

17 A Not to my knowledge.

18 Q Moving on to additional item on the report.

19 "It was also reported that Ms. Moss has
20 difficulty noticing when patients get up from
21 their seats, need assistance, i.e., during
22 bingo, or reading patients' facial expressions.
23 Ms. Moss reported that she uses auditory
24 compensation strategies to listen for tone of
25 voice or responsiveness when she initiates a

SHELDON, DEBORAH
04/04/2019

Page 119

1 question or interaction. She reports that she
2 will also ask other staff or nurses for
3 feedback regarding patient behavior or affect,
4 otherwise Ms. Moss is unable to see faces or
5 expression."

6 Do you have any thoughts on auditory
7 compensation strategies?

8 A Not all patients are able to communicate in an
9 auditory manner.

10 Q That's right. There's the suggestion here, to
11 ask other staff or nurses for feedback
12 regarding patient affect or behavior, correct?

13 A That was one of the concerns, that we don't
14 have the staff in that department any longer to
15 help accommodate that.

16 Q How frequently does this department have
17 nonverbal patients?

18 A Kathy Holley would have to answer that.

19 Q It's not all the time, though, is it?

20 A I don't know.

21 Q UH doesn't have the staff to have more than one
22 person present in the room during group
23 sessions of up to 14 people?

24 A At times they can be on their own.

25 Q Ms. Moss is a part-time employee --

SHELDON, DEBORAH
04/04/2019

Page 120

1 A Correct.

2 Q -- correct?

3 Did UH ever consider the cost of
4 providing -- of ensuring that there would be
5 double staffing in the event that there's a
6 nonverbal patient?

7 A To have staff to accommodate the needs was
8 deemed to be an unreasonable accommodation.

9 Q Who deemed it to be unreasonable? Who
10 considered it and when?

11 MR. BULEA: Objection.

12 You can answer.

13 Q I'm sorry. I can break it down.

14 A That's --

15 Q Who deemed it unreasonable?

16 A That was a decision through human resources,
17 the manager.

18 Q Who specifically in HR?

19 A Myself.

20 Q How did you make that determination?

21 A We don't have the staff to do that. The
22 departments all have a budgeted amount of
23 employees.

24 Q Do you have a pool of resources to draw upon
25 for purposes of reasonable accommodations?

SHELDON, DEBORAH
04/04/2019

Page 121

1 A Not that I'm aware of.

2 Q So you were considering solely the resources of
3 the geriatric psych department in determining
4 whether or not this request could be
5 reasonable?

6 A Correct. We could not assign another employee
7 to do that. We can't add functions to another
8 person's job.

9 Q Why not?

10 A Because it's an unreasonable expectation.

11 Q Why is it unreasonable? Are you talking about
12 in terms of cost, or do you -- did somebody
13 think it's unacceptable, to --

14 A You would be adding responsibilities to another
15 person's job description.

16 Q Please explain to me what is unreasonable about
17 that.

18 A Because you're adding -- you would be adding
19 responsibilities to another job. Are you
20 asking about --

21 Q Yes.

22 A -- a specific job?

23 Q Yeah. I'm just asking, like, what -- so it
24 sounds like you at UH actually considered
25 whether or not providing a second staff

SHELDON, DEBORAH
04/04/2019

Page 122

1 member -- ensuring a second staff member would
2 be present at all times would be unreasonable,
3 correct?

4 A Correct.

5 Q That was actually considered.

6 At what point in the process, by the way,
7 was that considered?

8 A I don't have an exact date. It was in the
9 beginning, when the request came in. There was
10 no other request beyond the one that would
11 assist at the computer.

12 Q Ms. Moss never specifically requested another
13 employee to be present at all times, correct?

14 A Not that I'm aware of.

15 Q Kathy Holley's the one who assumed that that
16 would be a necessity to ensure safety, correct?

17 A You would have to ask Kathy Holley that.

18 Q How did you get the idea that this would be a
19 reasonable -- or that this would be a potential
20 accommodation to assess?

21 A Trying to do an exhaustive effort to find a way
22 to make Ms. Moss be able to perform the
23 functions of her job.

24 Q Did you actually go to the extent of, like,
25 pricing out how much it would be to ensure the

SHELDON, DEBORAH
04/04/2019

Page 123

1 staffing level, to make sure that there would
2 be two staff available during all group
3 sessions that Ms. Moss is working in?

4 A No.

5 Q There usually were two staff members present
6 most of the time on that unit, weren't there,
7 during group sessions?

8 A You would have to ask Ms. Holley that.

9 Q Have you asked Ms. Holley that?

10 A I have not.

11 Q So whenever you were doing this evaluation, you
12 didn't know whether this was simply ensuring
13 that there would always be two present or
14 actually creating a new position or somehow
15 adding duties on, correct?

16 A Please rephrase that or say that again.

17 Q Okay. So if you didn't know -- you don't know
18 whether there were often another nurse or
19 another staff member present during -- in the
20 same room during the group sessions, do you?

21 A No. To my awareness, there are times when they
22 were alone.

23 Q There are some times when they're alone,
24 correct?

25 A Correct.

SHELDON, DEBORAH
04/04/2019

Page 124

1 Q Not all the time, though, right?

2 A No. Sometimes they're alone, requiring the
3 ability to be able to assess the situation.

4 Q With sight, correct?

5 A Correct.

6 Q I'd like to talk about the recommendations that
7 the Cleveland Sight Center made and I want to
8 see if any of these were discussed.

9 Did anybody ever propose training the
10 staff on blindness basics? Do you remember
11 having that come up in conversation or
12 considering that as an accommodation?

13 A I don't recall that, but I don't see that as a
14 concern.

15 Q I'd like now to move to --

16 MR. BULEA: Can we take a
17 quick bathroom break before you go to the next
18 document?

19 MS. WHITE: Absolutely.

20 Yeah.

21 - - - - -

22 (Recess taken.)

23 - - - - -

24 BY MS. WHITE:

25 Q So just one other item on P 14. I just want to

SHELDON, DEBORAH
04/04/2019

Page 125

1 note that this report seems to be dated in --
2 actually, there's a fax stamp on top that say
3 April 28, 2017.

4 So it appears to me that UH received this
5 report from the Cleveland Sight Center with
6 these particular recommendations on April 28,
7 2017. Dose that sound about right?

8 A Yes.

9 Q So let's move to P 15.

10 - - - - -

11 (Plaintiff's Exhibit 15 was marked.)

12 - - - - -

13 Q Once again I'm not sure what your awareness of
14 this document is.

15 Have you ever seen this document before?

16 A I have not seen this.

17 Q Well, I'm just going to ask you a few questions
18 about it, understanding that you have not seen
19 it before.

20 But this is -- it looks like it's an
21 email from Allison Evans, who is the OT who
22 conducted an evaluation for UH, right, of
23 Ms. Moss, correct?

24 A Correct.

25 Q Allison Evans is reporting that she received

SHELDON, DEBORAH
04/04/2019

Page 126

1 the OT report, unfortunately it is quite
2 similar in the report from the OD, in that it
3 just comments on technology accommodations for
4 documentation and reading purposes.

5 Did Allison Evans, to your knowledge,
6 ever consider any of those accommodations that
7 we just discussed that the Cleveland Sight
8 Center presented?

9 A I can't speak on behalf of Allison.

10 Q Okay.

11 A I know we considered them. There was never a
12 concern.

13 Q The particular accommodations that we just
14 discussed with the Sight Center?

15 A Yeah. So I guess let me reiterate.

16 Any accommodations that were presented to
17 us were never a concern. Ms. Moss was out of
18 work. Had she come back and had accommodations
19 that we could have accommodated, we would have
20 been very happy to do that.

21 Those accommodations that were ever
22 presented to us did not address all the
23 functions of her role. That was the concern.

24 Q Well, let's circle back to P 14.

25 I would like you to tell me what --

SHELDON, DEBORAH
04/04/2019

Page 127

1 reading these reports and these
2 recommendations, in your mind which essential
3 functions of the job were not addressed by this
4 report that UH had concerns about?

5 A If you go back to the job description --

6 Q Yeah.

7 A -- numbers 1 through 4.

8 Q Okay. So we had 1 through 4.

9 Then we had the Sight Center report
10 saying that Ms. Moss can use auditory
11 compensation strategies to listen for tone of
12 voice or responsiveness when she initiates
13 questions or interaction.

14 She reports she will ask other staff and
15 nurses for feedback regarding patient behavior
16 or affect.

17 And she reports higher contrast flooring
18 could help with potentially bumping into
19 people.

20 She reports that high-contrast tape could
21 help with scheduling.

22 She reports that a typoscope could help
23 with signatures.

24 She reports that bumps on the copy
25 machine could help with using the copy machine.

SHELDON, DEBORAH
04/04/2019

Page 128

1 She reports that partnering with a staff
2 member or trainer who's aware of the need for
3 verbal or touch prompts could assist Ms. Moss
4 in participating in crisis intervention
5 trainings that have a physical component.

6 What more did you need to know in order
7 to conduct an assessment or make a
8 determination about whether Ms. Moss could
9 perform the essential functions of her job?

10 A We talked about the flat touchscreen. Not an
11 issue.

12 The typoscope signature guide, not an
13 issue.

14 Q So what issues remained? Specifically what
15 issues remained?

16 A The direct interaction with the patient.

17 Q Okay.

18 A It's a patient care role. So the interactions
19 with the patient to create these therapies,
20 implement these therapies, assess the patient,
21 assess the risk to herself and others. That's
22 a significant part of the role that she was in.
23 Those are a concern for her, the patients, and
24 other staff.

25 Q You don't believe that the auditory

SHELDON, DEBORAH
04/04/2019

Page 136

1 Q Going into the meeting on June 1, was UH open
2 to the possibility that Ms. Moss might be able
3 to return, or had the decision been made at
4 that point?

5 A To terminate?

6 Q Yes.

7 A There was absolutely no determination to
8 terminate. There was an encouragement to find
9 other ways to keep Ms. Moss employed at
10 University Hospitals.

11 Q Had the conclusion been made that Ms. Moss
12 would not be permitted to return to her
13 position as a recreational therapist at UH?

14 A Without accommodations to reasonably perform
15 those functions, yes.

16 Q What do you mean by "without accommodations"?

17 Like, you mentioned several times that
18 Ms. Moss never in your mind raised any other
19 accommodations. What do you mean by that?

20 A So maybe I'm not clear. The accommodations
21 that were presented only addressed a small
22 subset of the job duties that impacted
23 basically the computer and other factors.
24 There were not accommodations that fully
25 addressed being able to perform the essential

SHELDON, DEBORAH
04/04/2019

Page 137

1 functions of her job. We were very open to
2 that.

3 Q But you had not reviewed that Cleveland Sight
4 Center low vision evaluation report prior to
5 June 1, 2017, correct?

6 A No. Those do not come to HR.

7 Q What information were you relying on then?

8 A We get a summary.

9 Q Okay.

10 A So, again, any accommodations request that were
11 presented to us were never of concern. Not any
12 accommodation request that was presented to us
13 was a concern.

14 The concern, which was communicated on
15 multiple occasions, was that the accommodations
16 as presented did not address the concern of the
17 patient care aspect of the role, which was a
18 primary part of her role.

19 Q I think that my confusion is when you say
20 concerns as presented -- "the accommodations as
21 presented."

22 The Cleveland Sight Center OT low vision
23 evaluation report contained a number of
24 accommodations. Were those accommodations that
25 were actually considered as part of the

SHELDON, DEBORAH
04/04/2019

Page 138

1 process?

2 A We considered anything that was presented.

3 Q Did you specifically consider auditory
4 compensation strategies?

5 A Is there a description of those? Do you have a
6 definition of what that is?

7 Q It's in the Cleveland Sight Center report.

8 Did you consider using auditory
9 compensation strategies to listen for tone of
10 voice or responsiveness when initiating
11 questions or interactions and asking other
12 staff or nurses for feedback regarding patient
13 affect or behavior?

14 A So that includes using other staff. That was
15 deemed not -- not a reasonable -- not to be a
16 reasonable accommodation.

17 Q You were part of the decision-making process
18 for other staff being ruled out as an
19 accommodation, correct?

20 A Yes.

21 Q Who else was part of that decision-making
22 process?

23 A Again, that would have been the manager, who
24 would have consulted with legal to make sure we
25 had a fair process.

SHELDON, DEBORAH
04/04/2019

Page 139

1 MR. BULEA: I just want
2 to -- I know --

3 MS. WHITE: Yeah.

4 MR. BULEA: It's fine to
5 say you talked with legal. We don't want to
6 disclose any conversation.

7 THE WITNESS: Correct.

8 MS. WHITE: Absolutely. I
9 respect that line.

10 Q Was that before June 1, 2017, that other staff
11 and the involvement of other staff was ruled
12 out?

13 A Before June of '17. I can't say it was before
14 that. It was through this entire process. We
15 at any point did not think that that was a
16 reasonable accommodation, to use other staff.

17 Q Okay.

18 A So if you have another staff that assists, that
19 makes the reason for the other person.

20 Q Let's go back for just a second.

21 A Sure.

22 Q I want to make sure that we're abundantly clear
23 on this.

24 So if we can go to P 5, this list of
25 Kathy Holley's concerns. I want to go through

SHELDON, DEBORAH
04/04/2019

Page 140

1 this list one more time now and put you in the
2 mindset of at the conclusion of the EAP
3 process.

4 So the fitness for duty evaluation has
5 been performed, information has been requested,
6 reports have been received, but the decision
7 was made that that information was not
8 sufficient to -- for UH to determine that
9 Ms. Moss could safely perform the essential
10 functions of her job, correct?

11 A Correct.

12 Q So P 4, document 1427. Sorry. P 5. 1427 to
13 1428. These were the concerns at the beginning
14 of the process.

15 So I want to go back and I want to go one
16 at a time and ask you which ones were still a
17 concern at the conclusion of the process going
18 into the June 1, 2017 meeting.

19 A Which of these were a concern?

20 Q Yes. I'm going to go one at a time.

21 MR. BULEA: She'll ask you.

22 Q So "Signing treatment plans and documents you
23 cannot see."

24 At the conclusion of the fitness for duty
25 evaluation, what accommodations did you

SHELDON, DEBORAH
04/04/2019

Page 141

1 consider and which ones did you rule out? Did
2 you make a determination about whether Ms. Moss
3 could perform that?

4 A There was not a concern about signing treatment
5 plans if she was in her office to do that.

6 Q Okay.

7 A But there were occasions, based on Kathy
8 Holley, that that was not happening.

9 Q So that would, then, not be something that
10 Ms. Moss couldn't do because of disability,
11 that would be more of a performance factor, is
12 that right?

13 A Ask again, please.

14 Q Ms. Moss can see treatment documents when they
15 are provided in accessible format, correct?

16 A I believe so, yes.

17 Q A number of options to render documents
18 accessible were specifically requested by
19 Ms. Moss or identified in the Cleveland Sight
20 Center report, correct?

21 A A number of methods to address.

22 Q To make documents -- to make -- sign treatment
23 plans?

24 A The CCTV, yes.

25 Q Okay.

SHELDON, DEBORAH
04/04/2019

Page 142

1 A That was not a concern.

2 Q So the conclusion of that, we could check this
3 off the list and say we got a plan for how
4 Ms. Moss could safely perform the essential
5 functions of this job without -- with
6 accommodations with respect to signing
7 treatment plan documents. She could use the
8 CCTV, correct?

9 A Yes. If she's in her office to do it.

10 Q Yes.

11 A I think Kathy Holley could speak to -- that
12 happens during patient interaction, though.

13 Q "Unable to complete documentation unless you
14 are in your office."

15 What's a potential accommodation for
16 that? Also, is there an obligation to complete
17 documentation outside of the office?

18 A Kathy Holley would have to speak to that.

19 Q You have your job description. You had the
20 input from the fitness for duty exam.

21 The fitness for duty exam was in part to
22 determine whether or not this was addressed.

23 Was this addressed in the fitness for
24 duty exam?

25 A I think if you look at the job description it

SHELDON, DEBORAH
04/04/2019

Page 143

1 talks about the interdisciplinary process and
2 the reviewing of treatment plans while the
3 patient care is going on.

4 Documenting while the patient care is
5 going on, that is a concern that the
6 accommodations did not address.

7 Q So you don't think that she could complete the
8 documentation with a CCTV or other
9 accessibility documentation?

10 A Not outside of her office.

11 Q Did you consider other assistive technology,
12 like, you know, voice recognition software or
13 other assistive technology?

14 A We considered what was presented to us.

15 Q Cleveland Clinic raised a number of items.

16 I can review these and ask you about
17 them, but I'll just represent that one of them
18 was, for instance, Ms. Moss could utilize an
19 iPad, which would provide a high degree of
20 portability between workstations and possibly
21 be able to complete documentation outside of
22 the office. With low vision accessibility
23 features, she would be able to access emails
24 with the use of audible reading features, i.e.,
25 VoiceOver, which are built into the iPad. And

SHELDON, DEBORAH
04/04/2019

Page 144

1 if medical reports are accessible from the
2 iPad, she may be able to listen to them using
3 VoiceOver. She would benefit from training to
4 learn low visibility accessibility features of
5 the iPad if UH incorporates this technology for
6 staff.

7 Had you ever heard of that before? Was
8 that ever raised?

9 A The potential of using an iPad?

10 Q Yes.

11 A I did hear that. I don't know that it was put
12 into play in the system.

13 Q Is that a workable solution potentially?

14 A Well, there's a lot of ifs. That was a pretty
15 long statement.

16 Q Yes, it was.

17 A A lot of ifs. I don't know if the patient's
18 information was accessible via an iPad. I
19 don't know if that was implemented.

20 Q Who could figure that out and what steps were
21 taken to figure that out?

22 A Kathy Holley could.

23 Q Kathy Holley could assess whether an iPad
24 software could be accessible with VoiceOver
25 technology?

SHELDON, DEBORAH
04/04/2019

Page 145

1 A I thought you were asking about the patient
2 record on the iPad.

3 Q No. I'm asking about if the assistive
4 technology recommendation is a reasonable
5 accommodation.

6 A I don't know if she can assess that or not.

7 Q At the conclusion of the fitness for duty
8 evaluation process, though -- I want to circle
9 back to what Kathy Holley raised as a concern
10 in the beginning. "Ms. Moss is unable to
11 complete documentation unless she is in her
12 office."

13 Raised in the fitness for duty process
14 was an OT report by the Cleveland Sight Center
15 offering a number of recommendations for how
16 documentation could be completed outside of the
17 office, is that correct?

18 A Any accommodations that we received were not of
19 concern.

20 Q At the conclusion of the process, did Ms. Moss
21 through the Cleveland Sight Center propose an
22 accommodation that would potentially eliminate
23 this concern by Ms. Holley?

24 A I don't know if that particular one would
25 address that situation. I don't know that.

SHELDON, DEBORAH

04/04/2019

Page 146

1 Q You don't know if an iPad would assess the
2 concern about unable to complete documentation
3 unless you're in the office?

4 A I can't say for sure, no.

5 Q If you are uncertain right now, did you have
6 enough information -- did you have sufficient
7 information to make the conclusion that
8 Ms. Moss could not perform the essential
9 functions of this job if this concern was not
10 addressed?

11 A Yes, because there's far more that involves not
12 using technology.

13 Q We'll get there.

14 A That's the larger picture.

15 Q We'll get there. I'm asking about this
16 particular concern.

17 Was this concern addressed, "unable to
18 complete documentation unless you are in your
19 office"?

20 A I do not think the documentation was an issue,
21 correct.

22 Q Ms. Holley thought it was an issue and this was
23 a specific concern that you said influenced the
24 decision to send Ms. Moss to a fitness for duty
25 evaluation.

SHELDON, DEBORAH
04/04/2019

Page 147

1 A Again, it was the big picture.

2 Q Okay. This is a piece of the picture, though.

3 A It is, but it's not the whole picture.

4 Q "Incomplete assessment due to lack of visual
5 skills. Is the patient crying, smiling,
6 staring off, actively hallucinating, et
7 cetera."

8 What information -- what reasonable
9 accommodations did UH consider to address those
10 concerns of Ms. Holley?

11 A Whatever ones were presented to us.

12 Q "Auditory compensation strategies to listen for
13 tone of voice or responsiveness to initiate
14 questions or interactions."

15 Was that -- I mean would that assist
16 with --

17 A If someone is staring off or actively
18 hallucinating, I don't know that there's an
19 auditory compensation that would address that
20 issue.

21 Q When somebody is hallucinating, how does
22 anybody know that they're hallucinating?
23 They're usually saying things, aren't they?

24 MR. BULEA: Objection.

25 You can answer.

SHELDON, DEBORAH
04/04/2019

Page 148

1 A That's a clinical question.

2 Q "Concern about overall loss of visual cues and
3 all interactions with patients and staff, i.e.,
4 demonstrating distraction, hallucinations, and
5 how that impacts your ability to do a thorough
6 assessment."

7 Was that still a concern at the
8 conclusion of the fitness for duty evaluation
9 process?

10 A Yes.

11 Q What specific accommodations did UH consider
12 with respect to that concern?

13 A I would have to go back to the list. Again,
14 this is the -- nothing presented was going to
15 help her with the visual cue piece of it, the
16 perceptual ability to assess patients and
17 interact with them.

18 Q The auditory compensation strategies would not?

19 A Again, not everything has an auditory component
20 to it.

21 Q No, not everything does, but some does, right?

22 A Correct.

23 Q Others have movement?

24 A Correct.

25 Q Even sighted people don't have eyes in the back

SHELDON, DEBORAH
04/04/2019

Page 149

1 of their head, correct?

2 A Correct.

3 Q Witness the other day that you were unable to
4 respond to a patient's need in group patient
5 with limited visual skills -- verbal skills who
6 needed assistance during bingo who was sitting
7 two patients away from you. Other patients
8 were assisting that patient because you were
9 not aware he was trying to get your attention,
10 even though you were looking in his direction,
11 and they had to read his bingo numbers because
12 you could not.

13 Do you recall that particular concern?

14 A I recall this, yes.

15 Q Okay. Did you consider any strategies for how
16 bingo numbers could be read or groups could be
17 facilitated?

18 A Again, this was written in February.

19 Q Yes.

20 A The accommodations that came at the end of that
21 assessment, the accommodations that were
22 presented did not capture an ability to assess,
23 to effectively perform the essential functions
24 of the job with those accommodations.

25 Q But these are the specific concerns that were

SHELDON, DEBORAH
04/04/2019

Page 150

1 raised.

2 So I just want to know, did anybody go
3 through the process of problem solving how a
4 group bingo could be facilitated or other group
5 projects with accommodations?

6 A Were they considered?

7 Q Yes.

8 A Yes.

9 Q What was the conclusion?

10 A Using other staff would not have been -- again,
11 this doesn't tell us which accommodation was
12 suggested for which bullet point.

13 Q Yes, that's right. This was sort of -- is it
14 fair to say this was UH's roadmap of what the
15 specific concerns were, correct, at the time
16 the EAP process and the fitness for duty
17 process was initiated?

18 A That's correct.

19 Q So the purpose of the fitness for duty
20 evaluation would be to gather information that
21 would be relevant to answering the question of
22 whether these concerns could be addressed with
23 an accommodation, right?

24 A (Indicating.)

25 Q So this concern about bingo -- how was this

SHELDON, DEBORAH
04/04/2019

Page 151

1 concern validated, by the way? How do we know
2 that Ms. Moss couldn't see the patient trying
3 to get her attention? How do we know that it's
4 a concern that another patient is reading his
5 bingo numbers?

6 A How was it identified?

7 Q Yes.

8 A It was witnessed.

9 Q Who witnessed it?

10 A You would have to ask Kathy Holley.

11 Q Had you reviewed Ms. Moss' -- I mean you did
12 say you reviewed Ms. Moss' prior performance
13 evaluations, correct?

14 A I did.

15 Q She had sterling reviews on -- specifically on
16 her ability to organize group activities and
17 differentiate group activities, correct?

18 A Yes, she had very good reviews. There were
19 some concerns about improving engagement with
20 the patients and a focus on safety.

21 Q What was the specific safety concern that was
22 raised?

23 A I don't think there was a specific concern.

24 Q In fact, the performance evaluation, like most
25 evaluations, always says here's something to

SHELDON, DEBORAH
04/04/2019

Page 152

1 work on, right? There was always going to be
2 something listed as something to work on,
3 correct? Goals for the next year?

4 A Likely, yes.

5 Q Yes. Okay.

6 But with respect specifically to
7 Ms. Moss' ability to engage in group
8 activities, this was something that she had
9 developed a great reputation for over her 19
10 years, correct? This was the thing she was
11 best at, right?

12 A The documentation of her evaluations were all
13 good, yes.

14 Q Okay.

15 A No one's saying she was a bad employee.

16 Q "Witness that you walked all the way into a
17 patient room when I was in the room working on
18 behavioral issues with a patient with no
19 awareness that there was a situation of
20 concern. I had to speak up to let you know I
21 was in the room and to not disturb the
22 situation."

23 Correct?

24 A Uh-huh.

25 Q Is that the code violet situation you were

SHELDON, DEBORAH
04/04/2019

Page 153

1 describing?

2 A Yes, it is.

3 Q It doesn't say "code violet" here, though, does
4 it?

5 A It does not. I said I couldn't recall if it
6 was a code violet or not.

7 Q What's the layout of the rooms there? I
8 mean -- well, strike that.

9 The Cleveland Sight Center suggested
10 verbal prompts from staff would address the
11 particular concern of perceived lack of
12 awareness of a situation in a room. Is that
13 not sufficient?

14 A I think you had just said not everyone -- no
15 one has eyes in the back of their head. So how
16 would someone know they're coming?

17 Q That's right.

18 So if Kathy Holley was in the room alone
19 with a patient, she might not see somebody
20 behind her, correct?

21 A That's true.

22 Q Ms. Moss, if she's going into a room with a
23 door closed, she's not necessarily going to
24 know who's in there, correct?

25 A This doesn't say that the door was closed.

SHELDON, DEBORAH
04/04/2019

Page 154

1 MR. BULEA: She's asking

2 you --

3 Q No. No. I'm just asking you as an example, a
4 for instance.

5 A I'm sorry. Say it again now, please.

6 Q If the door is closed and Ms. Moss was entering
7 the room, she wouldn't -- even if she were
8 sighted, she would not be able to see what was
9 in the room if there was a door between her and
10 the room, correct?

11 A Correct.

12 Q Knowing that there are even some instances where
13 sighted staff are not going to be able to rely
14 on their vision, why is a verbal cue not good
15 enough? Why is that not sufficient to address
16 this particular concern?

17 A I'm not saying that a verbal cue isn't an
18 assistive measure.

19 Q Okay.

20 A She's saying here that she walked all the way
21 into the room. So there was not awareness, the
22 ability to perceive that there was a situation
23 going on.

24 Q This must have been a situation that -- the
25 visual was the only issue, it was one that

SHELDON, DEBORAH
04/04/2019

Page 155

1 was -- apparently didn't have auditory cues
2 that something was going on, correct?

3 A Correct. And I believe if you ask Ms. Holley
4 that, you have to be careful with not
5 escalating a situation. So oftentimes you want
6 to do keep it ...

7 Q Quiet.

8 A Yeah.

9 Q Because the auditory piece is very important.
10 The tone of voice, how people speak. You can
11 pick up a lot of cues in an auditory way,
12 correct?

13 A When you want there to be auditory, yes.

14 Q "Physically walked into staff members in the
15 hallway. I witnessed one. Two others reported
16 to me from past. When I mentioned the one, you
17 brushed it off and walked away."

18 A Yes.

19 Q How often do people bump into each other in the
20 hallways at UH? It's a busy place, right?

21 A I don't think I can answer that question.

22 Q How serious is that of a concern, somebody
23 bumping into somebody in a hallway?

24 A Bumping into someone is not a concern. It
25 creates the awareness of a concern, that if you

SHELDON, DEBORAH
04/04/2019

Page 156

1 can't see someone, you run into them, what else
2 are you not seeing?

3 Q That's the concern that you have here? I'm
4 really trying to -- I'm honestly trying to
5 understand.

6 What's the concern about bumping into
7 people in the hallway?

8 A It demonstrates that you cannot see someone
9 coming toward you.

10 Q Okay.

11 A Therefore, if you're interacting with patients,
12 how do you see them? How do you read the
13 treatment plan? How do you identify them? How
14 do you identify the reception to the therapies
15 that are being administered? Is it effective?
16 Are they escalating? Are they hallucinating?
17 Are they staring off? Are they crying?

18 Q So once you find out that somebody has that
19 vision impairment, all sorts of other questions
20 arise in the mind that haven't arisen before,
21 correct, about somebody's ability to do the
22 job?

23 A That's one of those. It's a clue. Yes, it is.

24 Q UH didn't have that clue for the first 19 years
25 that Ms. Moss worked there, did they?

SHELDON, DEBORAH
04/04/2019

Page 157

1 A Yes, they did.

2 Q But even with that one clue, the bigger picture
3 was that for 19 years she was able to safely
4 perform all of the essential functions of the
5 job, correct?

6 A I can't speak to what happened prior to my
7 arrival there.

8 Q The instance of bumping into somebody in the
9 hallway, she wasn't written up for that. There
10 was no documentation of that, correct?

11 A Running into somebody is not a violation of a
12 policy. So you would not be written up for
13 that.

14 Q The scenario you talked about, you said if
15 somebody's walking towards you and you bump
16 into them, that you might not have seen them,
17 is that correct?

18 A That's what I said, yes.

19 Q What about the other person walking towards
20 her? Maybe they didn't see her, correct?

21 A That could be too.

22 Q Cleveland Sight Center proposed higher contrast
23 flooring and better lighting as a way to avoid
24 bumping into somebody in the hallway.

25 Would that address this particular